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In the Supreme Court of the United States

OCTOBER TERM, 1974

73-2036
No. A-1125

COMMERCE UNION BANK,
Plaintiff-Respondent,

vs.

INQUIPCO, INC., d/b/a INDUSTRIAL EQUIPMENT COMPANY et al.,
Defendant-Petitioner.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

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Commerce Union Bank, your Plaintiff-Respondent herein, files this, its reply to the Petition for Writ of Certiorari.

OPINIONS

The various Opinions and Decrees of the Tennessee Courts are properly set forth in the Appendix.

QUESTION PRESENTED

Whether a Defendant making a personal appearance failed to have its name entered on the Court records as representing itself, did not retain counsel, and nothing appeared of record to notify counsel for Plaintiff-Respondent, could the Plaintiff-Respondent then proceed under *Tennessee Code Annotated,* Section 21-501 to legal judgment?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the Constitution granting due process and the equal protection of the laws certainly pertained to the Defendant-Petitioner herein under the following Tennessee State Statute:

Tennessee Code Annotated, Section 21-501.

"The bill or cross bill, or equivalent, may be taken for confessed in the following cases:

(1) When, being duly served with process, as provided in chapter 2 of this title, the defendant fails to plead, answer, or demur by the time fixed by law."

STATEMENT OF THE CASE

The statement of the case in the Petition is substantially correct. The Plaintiff-Respondent specifically calls attention to the fact that the Defendant-Petitioner is a Corporation and that the President of the Defendant-Petitioner company is not an Attorney and admittedly appeared without an Attorney to make a defense for a Corporation.

CONSTITUTIONAL QUESTION

Defendant-Petitioner did nothing after its President made an alleged appearance at the Clerk and Master's office on July 13, 1970 until judgment was taken on October 5, 1971, some fifteen (15) months later.

The Defendant-Petitioner, having failed to answer, plead or demur as required by the Statute 21-501 herein set out, gave right to Plaintiff-Respondent to proceed to pro confesso, then judgment, then a right to an execution on the judgment.

The Defendant-Petitioner was required under the Statute to answer, plead or demur none of which were ever filed. The Defendant-Petitioner did not avail itself of the right to plead, answer or demur and had it done so as required by the law of Tennessee, this matter would not now be on Petition for Certiorari in this Honorable Court.

REASONS FOR NOT GRANTING THE WRIT

The Defendant-Petitioner failed to avail itself of protection laws provided by the State of Tennessee. The State law ordered Defendant-Petitioner to answer under *Tennessee Code Annotated,* Section 21-201;

Tennessee Code Annotated, Section 21-201.

"Upon the bill being filed and the required security given, the clerk, after indorsing upon the bill the date of the filing and entering the cause in his rule docket, shall forthwith issue subpoena to answer, and copy of the bill for the defendant, and all other process ordered."

and pro confesso was granted under Section 21-501 as provided by the Tennessee Statute.

The Defendant-Petitioner's President was the single witness to testify that he appeared at the Clerk's office and though he appeared without Attorney, the Corporation failed to answer as provided by the Tennessee State Statutes. The Defendant-Petitioner Corporation, failing to answer, plead or demur, gave the right by law to Plaintiff-Respondent to proceed under the State Statutes and all the Courts in Tennessee, including the Tennessee Supreme Court, held that the Plaintiff-Respondent proceeded in a legal manner in all actions it took under the law.

The Plaintiff-Respondent assumes that the reason no Federal cases were reported on this subject is because the Defendant-Petitioner failed to avail itself of State laws provided to give it its day in Court and therein, it failed to exhaust its remedy at the State level.

CONCLUSION

The cases cited by the Defendant-Petitioner have no relation to the case at bar. The Fuentes decision having to do with repossession of property by an officer of the law, held that a hearing must be given the Defendant before a proper Tribunal before the possession of property could be had and certainly has no relationship to the case at bar.

The applicable State laws under which the judgment was obtained against the Defendant-Petitioner provided for the Defendant-Petitioner to have its day in Court and it failed to avail itself of those laws.

Respectfully submitted,

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September, 1974